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General Assembly

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Ad Hoc Committee on the Administration of Justice at the United Nations
First session
10-18, 21 and 24 April 2008

Draft report

Rapporteur: Mrs. Yella **Zanelli** (Peru)

I. Introduction

1. The first session of the Ad Hoc Committee on the Administration of Justice at the United Nations was convened in accordance with General Assembly decision 62/519. The Committee met from 10 to 18 and on 21 and 24 April 2008, at the Headquarters of the United Nations in New York.

2. In accordance with decision 62/519, the Committee is open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency.

3. The session was opened by the Assistant-Secretary-General for Legal Affairs, Larry D. Johnson, on behalf of the Secretary-General.

4. At its first meeting, on 10 April 2008, the Committee elected its Bureau, as follows:

Chairperson:
Ganeson Sivagurunathan (Malaysia)

Vice-Chairpersons:
Lebohang Fine Maema (Lesotho)
Thomas Fitschen (Germany)
Andris Stastoli (Albania)

Rapporteur:
Yella Zanelli (Peru)

5. The Director of the Codification Division of the Office of Legal Affairs, Mahnoush H. Arsanjani, acted as Secretary of the Committee. The Deputy Director of the Division, George Korontzis, acted as Deputy Secretary of the Committee and as Secretary of the Working Group of the Whole. The Codification Division provided the substantive services for the Committee.

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6. At its 1st meeting, the Committee adopted the following agenda (A/AC.275/L.1):

1. Opening of the session.

2. Election of officers.

3. Adoption of the agenda.

4. Organization of work.

5. Continued work on the legal aspects of the item

"Administration of justice at the United Nations", taking into account the results of the deliberations of the Sixth Committee on the item, previous decisions of the General Assembly and any further decisions that the Assembly may take during its sixty-second session prior to the meeting of the Ad Hoc Committee.

6. Adoption of the report.

7. The Committee had before it:

(a) General Assembly decision 62/519;

(b) A letter dated 20 November 2007 from the President of the General Assembly to the Chairman of the first Committee (A/C.5/62/11);

(c) General Assembly resolutions 61/261 and 62/228;

(d) A note by the Secretary-General entitled "Administration of justice: further information requested by the General Assembly" (A/62/748 and Corr.1).

II. Proceedings

8. The Committee held [two] plenary meetings, on 10 and [24] April 2008.

9. At its first meeting, on 10 April 2008, the Committee adopted its programme of work and decided to proceed with its discussions in the format of a working group of the whole. The Committee also held a general exchange of views, during which delegations made statements. A summary of the debate is contained in section III below.

10. The Working Group of the Whole held [four] meetings, on 11, 14 and [21] April 2008, including two question-and-answer meetings on 14 April, in which representatives of the Department of Management, the Office of Legal Affairs, the Office of Human Resources Management, the Office of the Ombudsman, the Secretariat of the United Nations Administrative Tribunal and the Panel of Counsel answered questions raised by delegations.

11. The Working Group organized its work by addressing the legal aspects of the note by the Secretary-General, including the scope of the new system of administration of justice, legal assistance for staff, and jurisdiction and powers of the Dispute Tribunal and the Appeals Tribunal, as well as the draft statutes of the Tribunals. An informal summary of the discussions in the Working Group is annexed to the present report (see annex ___). The summary was prepared by the Chairperson for reference purposes only and not as a record of the discussions.

12. In several rounds of informal consultations, convened from 11 to 18 April 2008, coordinated by Thomas Fitschen, Vice-Chairperson of the Committee, the draft statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal (see A/62/748, annexes I and II, and Corr.1), were thoroughly considered.

13. At its [2nd] meeting, on 24 April 2008, the Committee adopted the report on its first session.

III. General comments made in plenary

A. General aspects

14. Delegations reiterated their support for a new system of administration of justice characterized by independence, transparency, efficiency, professionalism and accountability. The need for the new system to be consistent with relevant principles of international law, including those relating to the rule of law and due process, was emphasized by the speakers. It was also observed that compliance with such principles as impartiality, efficiency and accessibility should not be compromised by cost-based considerations.

15. The speakers welcomed the progress achieved so far, including the adoption of General Assembly resolution 62/228, according to which the Assembly decided to establish a two-tier formal system of administration of justice at the United Nations. The recent appointment of four members of the Internal Justice Council was also welcomed.

16. Some delegations stressed the importance of meeting the deadline of 1 January 2009 for the implementation of the new system and called for the adoption of the necessary decisions to enable the new system to become operational, as planned. It was also observed that, in the light of new experiences, such decisions could be reviewed in the future.

17. The view was expressed that the Committee should focus its attention on the legal aspects of the reform of the administration of justice, in particular on the elaboration of the statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, and that discussions should not be reopened on issues on which the General Assembly had already taken a decision in resolution 62/228.

B. Scope *ratione personae* of the new system of administration of justice

18. Some delegations emphasized that it was essential to ensure that all staff members, regardless of their duty stations, have full access to the new system of administration of justice. The view was also expressed that, while non-staff personnel could be granted access to the informal system of justice, granting them access to the formal system required careful consideration.

19. Some other delegations called upon the Committee to focus its work, as a first step, on the establishment of a new system that would cover, at a minimum, those individuals who had access to the current system. In their view, providing effective remedies to all categories of personnel could be considered at a later stage.

20. According to another point of view, such contentious issues as granting access to the formal system to certain categories of non-staff personnel, as well as issues relating to claims by staff associations before the tribunals, should be considered at a later stage.

21. The view was also expressed that United Nations employees who would not be granted access to the new system of administration of justice should, regardless of their contractual relationship with the Organization, be provided with adequate procedures for dispute settlement and alternative remedies for redress.

C. Appointment, composition, jurisdiction and powers of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal

22. Some delegations welcomed the fact that the final decision on the election of the judges of both Tribunals would be taken by the General Assembly.

23. The view was expressed that the judges of the Dispute Tribunal should be empowered to make collegial decisions when they deemed it appropriate, in accordance with article 10, paragraph 8, of the draft statute of the Dispute Tribunal.

24. In the view of some delegations, it was essential to consider the following outstanding matters: (a) issues relating to the jurisdiction *ratione personae* and *ratione materiae* of the Dispute Tribunal and the Appeals Tribunal; (b) questions relating to the powers of judges, in particular with respect to specific performance; (c) the kind of compensation that may be awarded; and (d) the relationship between the formal and the informal systems, in particular as regards the power of the judges of the Dispute Tribunal to refer a case to mediation.

25. It was observed that the Appeals Tribunal should be empowered to review the facts in cases where the facts had been established in an arbitrary manner by the Dispute Tribunal; where the Dispute Tribunal had manifestly committed an error in ascertaining the facts; and where new facts had come to the attention of the parties to a dispute. Granting such power to the Appeals Tribunal was particularly important when the decision of the Dispute Tribunal was rendered by a single judge.

D. Legal assistance to staff

26. Some delegations reiterated that legal assistance to staff should continue to be provided and that it should be further strengthened through a professional office, pursuant to General Assembly resolution 61/261. In their view, legal assistance should be made equally available to all individuals covered by the system, and the elaboration of a code of conduct was essential to ensuring the independence and impartiality of those individuals who were involved in the provision of legal assistance. In their opinion, legal assistance to staff should cover procedural issues, the assessment of the merits of a case, as well as legal representation.

27. The view was also expressed that the Committee should not attempt to resolve the question of the mandate of the newly established Office of Staff Legal Assistance, which, in accordance with resolution 62/228, would be considered at the sixty-third session of the General Assembly.

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II. Proceedings

13. At its second meeting, on 24 April 2008, the Ad Hoc Committee decided to annex to its report the coordinator's summary of the observations made in the informal consultations on the draft statute of the United Nations Dispute Tribunal and on the draft statute of the United Nations Appeals Tribunal.

14. At the same meeting, the Ad Hoc Committee adopted the recommendation contained in section IV of the present report.

15. Also at the same meeting, the Ad Hoc Committee decided to authorize its Chairman to write a letter to the President of the General Assembly requesting him to inform the Chairman of the Fifth Committee of the result of the work of the Ad Hoc Committee.

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Annex I

Informal summary of the discussions in the Working Group of the Whole, prepared by the Chairperson

A. Scope of the new system

1. Different views were expressed regarding the scope of the new system of administration of justice at the United Nations. Some delegations supported the expansion of the scope of the new system to the United Nations personnel who were not covered under the current system. It was also proposed that access to the new system be granted to certain categories of non-staff personnel, including officials other than Secretariat officials and experts on mission. The view was also expressed that the new system should cover all personnel working on a full-time basis for the Organization.

2. Some delegations reiterated their preference for a step-by-step approach and favoured limiting the scope of the new system, at the initial stage, to the staff covered under the current system. In their view, this approach could facilitate the resolution of pending issues and the timely implementation of the new system. The coverage of the other categories of personnel listed in the note by the Secretary-General, as well as the best remedies that could be made available to them, should be considered at a later stage.

3. Other delegations expressed concern about granting access to certain categories of non-staff personnel to the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, as proposed in the draft statutes, annexed to the note by the Secretary-General. In accordance with this viewpoint, addressing the grievances of non-staff personnel might be indispensable, but it should not be

pursued in the format of the system established for the staff. The argument was also advanced that the rights and obligations of non-staff personnel and those of staff members were different in nature. The expansion of the scope of the new system would be costly and cumbersome, and would entail the risk of undermining from the outset the ability of the new system to protect the personnel covered by the current system. Such an expansion was likely to generate unsound results, such as: probationary employees of the United Nations enjoying less protection than contractors; confusion on whether contractors and consultants were bound by the rules applicable to staff members; and the potential risk that contractors and consultants would claim to be considered as staff members for purposes other than access to the new system of administration of justice.

4. The necessity of assessing the effectiveness of mechanisms available to the various types of personnel for settling their disputes with the Organization was mentioned by some delegations. A preference was expressed for the recourse by non-staff personnel to arbitration and other mechanisms provided for under their relevant contracts.

5. Further information was requested about the redress mechanisms currently available to interns, gratis personnel and volunteers other than United Nations Volunteers, as well as about the kind of measures under way, to ensure that field workers could have access to the justice system. Clarifications were sought about the existence of cases in which the existing Administrative Tribunal might have granted *locus standi* to non-staff personnel, and on the resort to "traditional methods involving community participation" as a means of dispute settlement for daily paid workers.

B. Legal assistance for staff

6. Some delegations reiterated the importance of providing continued legal assistance for staff through a professionalized office, which should be independent, impartial and equally accessible to all staff. They also repeated the view that legal assistance should include the legal assessment of the merits of a case as well as legal representation.

7. The view was expressed that the employment of external lawyers, who were not familiar with the Staff Regulations and Rules and the jurisprudence of the United Nations Administrative Tribunal, was unlikely to be helpful and was not cost-effective. It was suggested that the individuals who would receive legal assistance from the Office of Staff Legal Assistance should contribute to the expenses incurred. This procedure would discourage the institution of abusive proceedings.

8. In the view of some delegations, more information was required on the barriers that prevented external lawyers from becoming familiar with the United Nations system of administration of justice, as well as on the problems that recourse to such lawyers would generate. Additional information was also requested on the representation of staff by members of the Office of Staff Legal Assistance.

9. It was pointed out that, since the General Assembly had decided to revert to the mandate of the Office of Staff Legal Assistance at its sixty-third session, the Ad Hoc Committee should avoid intensive discussion of the issue. Concerns were

expressed about the representation of staff by the members of the Office of Staff Legal Assistance in cases before the system, owing to possibility of conflict of interests. It was also observed that such a practice did not exist in administrative tribunals of other international organizations.

C. Jurisdiction and powers of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal

10. The view was expressed that the jurisdiction *ratione materiae* of the formal system should be sufficiently broad to include claims relating to conditions of employment, as well as disputes arising out of alleged violations by the Organization of its obligations vis-à-vis its employees.

11. According to another view, the jurisdiction *ratione materiae* of both Tribunals should be narrowly defined. The language contained in the draft statutes, which reflected the proposal by the Redesign Panel concerning the breach of duties of the Organization, was too broad. Concern was expressed about the practice of the United Nations Administrative Tribunal, which had gone beyond the terms of contracts and the relevant rules and created a new subject-matter jurisdiction that was not originally foreseen.

12. It was pointed out that it would be inappropriate to empower the United Nations Appeals Tribunal to review errors of material facts.

13. Concern was expressed about granting staff associations *locus standi* to bring claims on behalf of their members. It was stated that class actions were not appropriate in a self-contained system of administration of justice such as that of the United Nations. Concerns were also expressed about the provisions of the draft statutes that would allow staff associations to bring actions on their own behalf, since there were alternative mechanisms for staff associations to protect their rights.

14. Some delegations emphasized the need for receiving more information on the rules currently applicable to staff associations as well as the solutions envisaged under the new system, in particular with respect to their power to represent staff members and their *locus standi* to protect their own rights.

15. At the fourth meeting of the Working Group of the Whole, on 21 April, the Chairman informed the Working Group that in view of the large number of pending issues he had requested Thomas Fitschen, the Vice-Chairman, to conduct intersessional informal consultations on the draft statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal with a view to making further progress.